

REMARKS

Claims 1-5, 7, 8, 10, 14-20, 22-25, 35-39, 42-46, and 48 are presented for the Examiner's review and consideration. Claims 1, 22-25, 35, 43-45, and 48 were amended and claims 6, 9, 11-13, 21, 26-34, 40, 41, 47, and 49-51 were canceled in the previous response filed December 3, 2007. Claim 42 is amended, herein, to depend from claim 35 instead of canceled claim 41. Applicants believe the claim amendments and the accompanying remarks, herein, serve to clarify the present invention and are independent of patentability. No new matter has been added.

Applicant's reply filed on December 3, 2007 was deemed not fully responsive to the Office Action dated August 3, 2007 as not adequately addressing the 103 rejection of Winston in view of Shikhman. Applicant wishes to restate his remarks of the reply dated December 3, 2007, and include the following additional arguments.

35 U.S.C. §103(a) Rejection

In the Office Action dated August 3, 2007, Claims 21-23, 40-42, and 48 were rejected under 35 U.S.C. §103(a) as being unpatentable over Winston (U.S. Patent 3,513,848) in view of Shikhman (U.S. Patent 5,423,796). Initially, claims 21, 40, and 41 were canceled in Applicant's reply filed on December 3, 2007, rendering rejection of these claims moot. However, Independent claims 1 and 35 were amended to recite the elements of these dependent claims. For reasons set forth below, Applicants respectfully submit that the §103(a) rejections should be withdrawn.

The Response to Amendment stated that the 103 combination of Winston in view of Shikhman involves placing the entire device of Winston through an insulative trocar sleeve 28. The Examiner also noted that in this configuration, the sleeve is slidable over the tubular member and vice versa, the tubular member is slidable inside the insulating sleeve. Applicant respectfully disagrees that the combination of Winston in view of Shikhman discloses a device where the sleeve is slidable over the tubular member.

Referring to FIGS. 2 & 3, Shikhman discloses an apparatus used to penetrate body tissue having an obturator assembly 12 and a cannula assembly 14. (Col. 4, Ins. 1-2). The cannula assembly 14 includes cannula housing 26 and *cannula sleeve 28 secured to the cannula*

housing and extending outwardly therefrom. (Id). Cannula housing 26 is configured and dimensioned to interfit with obturator housing 16 so that *obturator shaft slides within cannula sleeve 28* when the two assemblies are interfitted. (Id). Cannula housing 26 also includes at least two openings, and the first opening 32 permits *rigid securement* of the proximal end of cannula sleeve 28. (Col. 4, lns. 38-42). As such, Shikhman discloses a cannula sleeve rigidly secured to the cannula housing, the cannula housing configured with the obturator housing so that the obturator shaft slides within the cannula sleeve. ***However, Shikhman does not disclose or suggest that the cannula sleeve is independently slidable over the obturator shaft.*** Because the sleeve is rigidly secured to its housing, movement of the actual sleeve is prevented. The only movement possible in the device of Shikhman is movement of the obturator shaft within the sleeve.

Combining the device of Winston (FIG. 3A) with the sleeve of Shikhman does not disclose or suggest the element of an insulating sleeve that is independently slidable over the second member. Combining the references would teach *rigidly securing* the sleeve to a sleeve housing and configuring the sleeve housing to interfit with the device of Winston so that the device of Winston slides within the sleeve. ***However, as discussed above, this configuration would rigidly secure the sleeve to the housing and prevent movement of the sleeve*** with respect to the second member.

Placing the entire device of Winston through the sleeve of Shikhman also does not teach Applicant's claimed invention. Merely surrounding the device of Winston with the sleeve of Shikhman does not provide any means for connecting the sleeve to the device in a way that would allow the sleeve to be moved independently from the second member. The sleeve must be connected to the device somehow, and the teaching of Shikhman involves rigidly securing the sleeve to a sleeve housing.

Furthermore, surrounding the device shown in FIG. 3A of Winston with an insulation sleeve would have adverse consequences. For example, the energy source 71a of Winston would be cut by the insulation sleeve. If a hole in the sleeve was provided for running the cable 72a to the device, this would prevent the sleeve from being able to slide, notwithstanding the fact that Winston in view of Shikhman does not provide for a way of even sliding the insulation sleeve.

Also, the second member in the device of Winston is moved towards the first member by providing a finger gripping means 77a. Surrounding the entire device of Winston with an insulation sleeve would remove access to the finger gripping means and prevent the user from having the ability to move the first member towards the second member.

Claim 1 recites, *inter alia*, an elongated insulation sleeve *slidably positionable* over the second member, wherein *movement of the insulation sleeve* is independent of movement of the second member. Independent claims 35 and 48 have analogous recitations.

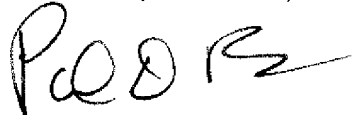
Accordingly, Applicant respectfully submits that claims 1, 35, and 48 are patentable over Winston in view of Shikhman. As claims 22 and 23 depend from claim 1 and claim 42 depends from claim 35, these dependent claims necessarily include all the elements of their base claim. Accordingly, Applicant respectfully submits that the dependent claims are allowable over Winston in view of Shikhman for the same reasons.

Conclusion

In light of the foregoing remarks, this application is now in condition for an examination on the merits, and early action is respectfully requested. If any questions remain regarding this amendment or the application in general, a telephone call to the undersigned would be appreciated since this should expedite the prosecution of the application for all concerned.

No fee is believed to be due. However, please charge any required fee (or credit overpayments) to the Deposit Account of the undersigned, Account No. 503410 (Docket No. 782-A03-024).

Respectfully submitted,



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